The Official Action, on page 2, item 3, asserts that Bainbridge et al. discloses the steps of receiving a request for connection from a client, wherein said request specifies a functional group, and wherein said functional group has a unique address and includes a plurality of servers. In addition, the Office Action asserts that each of the servers is capable of servicing said client; and wherein each of said plurality of servers is assigned a unique address. The Office Action also contends that Bainbridge et al. describes the step of selecting a server capable of satisfying said request from said functional group, and computing a route to said server. For the above disclosure, the Office Action cites to the following passages within Bainbridge et al.: col. 3, line 30-45 and col. 6, lines 5-20. Applicants respectfully disagree with such an interpretation of the Bainbridge et al. reference.

Bainbridge et al. teaches, in col. 3, lines 30-44, a method of performing workload management within an object-oriented client/server computing environment, wherein one of a plurality of servers is chosen to satisfy a client request based on at least one workload management policy. The method, which takes place within the client, including steps of: deciding whether a client application program has issued a request for a server to do some work; forming an extended object reference based on said request, said extended object reference having, in addition to a server address field and an object key field, at least one additional field; accessing workload management policy data based on said extended object reference; and selecting one of said plurality of servers based on said accessed workload management policy data. Additionally, in col. 6, lines 4-21, Bainbridge et al. teaches that the formed object reference (32 in FIG. 3A) contains a server group identifier (313a) which identifies a server group to be used to satisfy the client request, and a policy group identifier (314a) which identifies a group of policies to be used in determining which server computer of said group should be selected to do the requested work. The usual object reference fields provide a server address 311a and an object key 312a. Server address field 311a is initially

filled in with the address of a router associated with the group of servers. This allows clients with no server groups unit 44 to still use the object reference to route client requests to a server group through an intermediate server-end router (albeit with the bottleneck problems discussed above). The object key 312a is filled in with the identifier of the object which should be invoked on the server machine that is eventually selected to process the request. The above passages fail to teach use of a unique address for each of the plurality of servers, as positively recited in independent Claims 1, 6, 14, and 22; these cited passages merely disclose a server address field 311a that contains the address of a router associated with the group of servers.

The Office Action acknowledges that Bainbridge et al. fails to disclose use of an ATM address, selection being transparent to said client, and establishing a virtual circuit from said client to said server. To cure these many deficiencies, the Office Action relies on Koperda for its teaching of a cable network architecture using an ATM switch, an ATM address, a transparent service, and setup of an ATM connection.

Koperda teaches, in col. 4, lines 8-22, a cable data network architecture that utilizes a master headend (MHE), which contains the core control systems for the network. The MHE includes an ATM switch 101, a gateway 102, a router 103, a network controller computer 104, an administration computer 105, a network element manager 106, application servers 107, and an optional encryption/decryption device 108. The ATM switch 101 moves the ATM data packets (e.g., 48 bytes of data plus a 5 byte header) around the system based upon their address information. The switch 101 also supports switched virtual circuits (SVC) and quality of service (QOS) for each connection. Koperda merely describes a generic ATM switch as applied to the distribution of cable programming, with no disclosure of the client/server computing environment of Bainbridge et al.

Applicants, therefore, respectfully submit that the rejection is based on the improper application of hindsight. It is well settled that it is impermissible simply to engage in hindsight reconstruction of the claimed invention, using Applicants' structure as a template and selecting elements from the references to fill in the gaps. ***In re Gorman***, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). Recognizing, after the fact, that a modification of the prior art would provide an improvement or advantage, without suggestion thereof by the prior art, rather than dictating a conclusion of obviousness, is an indication of improper application of hindsight considerations. Simplicity and hindsight are not proper criteria for resolving obviousness. ***In re Warner***, 397 F.2d 1011, 154 USPQ 173 (CCPA 1967).]

Applicants further suggest that Korperda is non-analogous art. In particular, it is submitted that one faced with Applicants' problem of routing client queries to alternate servers (page 2, lines 1-5) would not consult Korperda, which is concerned with a cable network distribution system, for a solution to the problem.

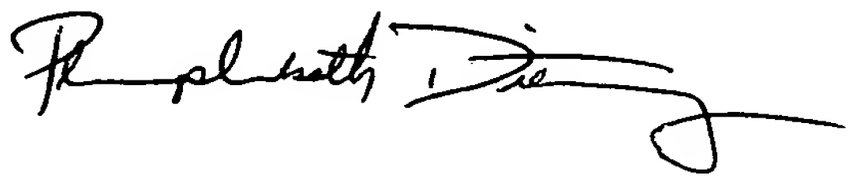
Moreover, a conclusion of obviousness is not compelled by the fact that the prior art could be modified so as to result in the combination defined by the claims; obviousness turns on whether the prior art suggests the desirability of the modification. Bainbridge et al. clearly states that the method of peforming workload management, which encompasses choosing a server, takes place within the client; accordingly, the client is aware of the selection process (col. 3, lines 30-35), and thus, does not support transparent selection, as positively claimed. Therefore, modification of the Bainbridge et al. system to provide client transparency would undercut the expressed objective of permitting the clients to perform workload management. The requisite motivation to establish a ***prima facie*** case of obviousness cannot be established by undercutting the expressed objectives of an applied reference. See ***In re Fritch***, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992); ***In re Gordon***, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); ***In re Schulpen***, 390 F.2d 1009, 157 USPQ 52 (CCPA 1968).

Applicants submit that the present Office Action has failed to provide substantial evidence of motivation for modifying the Bainbridge et al. reference based on the teachings of Koperda as required by ***In Re Gartside***, 2000 U.S. App. LEXIS 2065 (CAFC 2000). Therefore, Applicant respectfully submits that independent Claims 1, 6, 14, and 22 are in condition for allowance. Accordingly, Claims 2-5, 7-13, 15-21, and 23-29, which depend correspondingly from independent Claims 1, 6, 14, and 22, are allowable for at least the reasons put forth for the allowability of these independent claims.

Consequently, in view of the above arguments, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

DITTHAVONG & CARLSON, P.C.



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Form PTO 948 (Rev. 8-98) U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office Application No. 09/002187

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 12/31/97 are:

A. ☐ approved by the Draftsperson under 37 CFR 1.84 or 1.152.

B. ☒ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. The Examiner will require submission of new, corrected drawings when necessary. Corrected drawing must be sumitted according to the instructions on the back of this notice.

1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink. Color.
   ____ Color drawings are not acceptable until petiton is granted. Fig(s) _____
   ____ Pencil and non black ink not permitted. Fig(s) _____
2. PHOTOGRAPHS. 37 CFR 1.84 (b)
   ____ 1 full-tone set is required. Fig(s) _____
   ____ Photographs not properly mounted (must use brystol board or photographic double-weight paper). Fig(s) _____
   ____ Foor quality (half-tone). Fig(s) _____
3. TYPE OF PAPER. 37 CFR 1.84(e)
   ____ Paper not flexible, strong, white, and durable. Fig(s) _____
   ____ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted. Fig(s) _____
   ____ Mylar, velum paper is not acceptable (too thin). Fig(s) _____
4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:
   ____ 21.0 cm by 29.7 cm (DIN size A4)
   ____ 21.6 cm by 27.9 cm (8 1/2 x 11 inches)
   ____ All drawing sheets not the same size. Sheet(s) _____
   ____ Drawings sheets not an acceptable size. Fig(s) _____
5. MARGINS. 37 CFR 1.84(g): Acceptable margins:

   Top 2.5 cm Left 2.5cm Right 1.5 cm Bottom 1.0 cm
   SIZE: A4 Size
   Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm
   SIZE: 8 1/2 x 11
   Margins not acceptable. Fig(s) 1-3 1 5
   _____ Top (T) _____ Left (L)
   _____ Right (R) _____ Bottom (B)
6. VIEWS. 37 CFR 1.84(h)
   REMINDER: Specification may require revision to correspond to drawing changes.
   Partial views. 37 CFR 1.84(h)(2)
   ____ Brackets needed to show figure as one entity. Fig(s) _____
   ____ Views not labeled separately or properly. Fig(s) _____
   ____ Enlarged view not labeled separetely or properly. Fig(s) _____
7. SECTIONAL VIEWS. 37 CFR 1.84 (h)(3)
   ____ Hatching not indicated for sectional portions of an object. Fig(s) _____
   ____ Sectional designation should be noted with Arabic or Roman numbers. Fig(s) _____
8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)
   ____ Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s) _____
9. SCALE. 37 CFR 1.84(k)
   ____ Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s) _____
10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(i)
    ____ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s) _____
11. SHADING. 37 CFR 1.84(m)
    ____ Solid black areas pale. Fig(s) _____
    ____ Solid black shading not permitted. Fig(s) _____
    ____ Shade lines, pale, rough and blurred. Fig(s) _____
12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(p)
    ____ Numbers and reference characters not plain and legible. Fig(s) _____
    ____ Figure legends are poor. Fig(s) _____
    ____ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s) _____
    ____ English alphabet not used. 37 CFR 1.84(p)(2) Figs _____
    ____ Numbers, letters and reference characters must be at least .32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3) Fig(s) _____
13. LEAD LINES. 37 CFR 1.84(q)
    ____ Lead lines cross each other. Fig(s) _____
    ____ Lead lines missing. Fig(s) _____
14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(t)
    ____ Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Sheet(s) _____
15. NUMBERING OF VIEWS. 37 CFR 1.84(u)
    ____ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s) _____
16. CORRECTIONS. 37 CFR 1.84(w)
    ____ Corrections not made from prior PTO-948 dated _____
17. DESIGN DRAWINGS. 37 CFR 1.152
    ____ Surface shading shown not appropriate. Fig(s) _____
    ____ Solid black shading not used for color contrast. Fig(s) _____

COMMENTS

REVIEWER _____ DATE 12/14/00 TELEPHONE NO. _____

ATTACHMENT TO PAPER NO. _____